

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214130

DATE: January 11, 1985

MATTER OF: Fraudulent Travel Claim

DIGEST:

Air Force employee temporarily stationed in Saudi Arabia received advance for living expenses. The Air Force subsequently decided to recoup the entire amount advanced on false claim grounds. Our Office holds that Air Force has not presented sufficient evidence to overcome the presumption of honesty and fair dealing on the part of the employee, which we recognize in travel fraud cases. In computing the amount due employee, however, deduction should be made for meals obtained in government mess or government contractor's messing facilities.

An employee (Employee) of the Air Force has appealed the action of our Claims Group which denied his claim for per diem. Employee contests the Air Force's finding that he filed a false claim. Our Claims Group had upheld the Air Force's decision that Employee fraudulently overstated his temporary duty expenses and that the Air Force properly decided to recoup the entire cash advance he was allotted prior to his travel. It is our opinion, however, that the evidence provided by the Air Force is insufficient to override the presumption of honesty and fair dealing in favor of those who are defending false claim charges.

FACTS

On May 11, 1977, Employee received \$2,600 in advance for expenses to be incurred while on temporary duty in Saudi Arabia, which commenced the same day, and lasted until June 30, 1977. While in Saudi Arabia, Employee stayed in government-provided housing. He paid \$2 per day for the first 10 days, and then moved into lodgings provided by a government contractor for which he paid no fee.

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On July 8, 1977, Employee submitted an incomplete travel voucher leaving blank the portion of the voucher dealing with lodging and meals. After he submitted this voucher Employee had discussions with the Air Force travel office staffers over the absence of information concerning his lodging and meals status while on temporary duty. Employee claims the staffers advised him it was customary for employees to receive the highest per diem for travel which at the time was \$90 per day for travel in Saudi Arabia, regardless of employee use of government facilities. The staffers, on the other hand, assert that Employee equivocated about his use of government housing and meals, and that they followed his instructions when he completed his travel voucher in which the \$90 per day per diem was claimed.

The Air Force launched an investigation into Employee's travel expenses in the fall of 1977. In early March of 1978, Employee provided the travel office with a list of his government lodgings while in Saudi Arabia, completed a second voucher claiming use of government quarters, and was granted \$45 per day per diem for his trip, totalling \$2,253.75. He was also allowed an additional \$40.40 for travel and miscellaneous expenses and he repaid \$305.85 of the \$2,600 advance to the Air Force.

Subsequently, Lt. Col. Wingertzahn, Chief, Accounting and Finance Branch, Comptroller, sought recoupment of the \$2,253.75, charging that Employee submitted a fraudulent travel voucher in July 1977. Employee was charged the \$2,253.75 sum and was suspended without pay for 3 days as a penalty for the alleged false claim.

On July 7, 1978, Deputy Chief, Aircraft System Management Division, Directorate of Material Management, John R. Kenney, acting as employee grievance reviewer, reversed the action suspending Employee, ordered backpay for the 3-day period, and substituted a letter of reprimand in his personnel file. The \$2,253.75 claim remained, however. Employee brought an appeal of the claim to the GAO Claims Group on April 11, 1980. The Claims Group upheld the Air Force collection of Employee's per diem because the Air Force did "not act contrary to law or abuse its discretion."

The Claims Group denied Employee's appeal a second time in July 1981. We note that the Claims Group did not

have information concerning the grievance action before it when the Claims Group made its decision. Our Office received Employee's request to review the matter on January 10, 1984.

DISCUSSION

In cases such as the one at hand in which the employee is charged with submitting a false claim, the agency must present sufficient evidence to overcome the presumption of honesty and fair dealing on the part of the employee. Charles W. Hahn, B-187975, July 28, 1977. Prior decisions have explained that sufficient evidence is not shown if it merely appears that the higher amount claimed on a supplemental voucher reflected a lack of knowledge regarding government reimbursement procedure, rather than an intent to defraud. Eric C. Nielson, B-195380, December 5, 1979.

The Air Force presents two evidentiary bases for its belief that Employee submitted a false claim. The first is that he submitted a handwritten note disclaiming use of "government quarters," and the second was that in his discussions with Air Force travel office employees he was not forthcoming as to the quarters he used or where he obtained his meals.

Employee refutes the Air Force's interpretation of his handwritten note--claiming he believed that the contractor's quarters in which he stayed were not "government quarters" and further, that he was entitled to the \$90 per day per diem rate which he believed was customarily granted to all government travelers in Saudi Arabia. Employee claims his beliefs were confirmed in discussions with travel office staffers who filled out his voucher.

The statements of Employee's secretary support his contention that he was unfamiliar with the travel reimbursement regulations, that he was confused after reading the regulations, and that he relied upon the travel office staff to interpret those regulations for him. He particularly relied upon them with regard to footnote 13 of Air Force Per Diem Schedule, A-14, which specified that employees using government lodgings were entitled to a lesser per diem.

Further support for Employee's contentions derives from the findings of John R. Kenney, who reviewed his grievance. On July 7, 1978, Mr. Kenney found that:

"* * * [Employee] made a sincere and positive effort with appropriate management officials to obtain information for the proper preparation and submission of his travel voucher."

He further found that Employee was not a frequent traveler, having made only four temporary duty trips during his 23 years of government service.

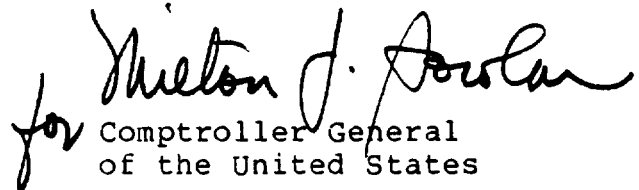
While the Air Force correctly assumed that a fraudulent lodgings claim would bar per diem reimbursement for every day the claim misrepresented lodgings costs, 60 Comp. Gen. 357 (1981), we find the evidence presented by the Air Force in the record to be insufficient to overcome the presumption of honesty and fair dealing in favor of Employee. Considering the record as a whole, and particularly the findings made by the grievance examiner, we think that a lack of knowledge seems at least as likely to have led to the incorrect voucher as fraudulent intent. Employee should not have submitted a blank travel voucher but the Air Force should certainly not have filled in that voucher claiming \$90 a day per diem for the Employee after the employee has signed the voucher. Since the evidence does not overcome the legal presumption in favor of the claimant, we cannot agree with our Claims Group that Employee had submitted a false claim.

We do not think, however, that Employee is automatically entitled to the \$2,253.75 which the Air Force sought to collect in 1978. That sum represents a \$45 a day per diem entitlement which the Air Force originally believed Employee was entitled to under JTR paragraph C-4552-3d for temporary duty in Saudia Arabia. It appears, however, that paragraph C-4552-3g which reads as follows, also applies:

"Government Mess or Government Contractor's Messing Facility. A deduction of 14% of the applicable maximum overseas per diem locality rate for the area will be made for each meal taken in a Government

mess or in a Government contractor's messing facility. The per diem for the day then will be increased by \$2.25 for each meal taken in a Government mess to cover the cost of food. For each meal taken in a Government contractor's messing facility, the per diem for the day will be increased by an amount equivalent to the charge paid for each meal. The resultant amount is not to be rounded off to the next higher dollar. In no case will the total per diem payable exceed the applicable maximum overseas per diem locality rate for the area."

The record reflects that Employee's meals were generally taken in either government mess or in a government contractor's messing facility. Accordingly, the Air Force should make the appropriate deductions for meals taken in government or contractor's facilities. If Employee can satisfactorily show that a specific number of meals were not taken in government mess or government contractor's messing facilities, deduction for the specific number of meals obtained privately need not be made.


for Comptroller General
of the United States